BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JASON WOODS	)	
Claimant	)	
V.	)	
	)	Docket No. 1,066,755
TRUCK INSURANCE EXCHANGE	)	
Self-Insured Respondent	)	

ORDER

Claimant requested review of the November 10, 2015, Award by Administrative Law Judge (ALJ) Kenneth J. Hursh. The Board heard oral argument on June 9, 2016, in Lenexa, Kansas.

APPEARANCES

Mark E. Kolich, of Lenexa, Kansas, appeared for the claimant. Kendra M. Oakes, of Kansas City, Kansas, appeared for self-insured respondent.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found claimant to have an 8 percent impairment to the left leg. Respondent was ordered to pay all authorized medical expenses related to treatment of claimant's injuries subject to the Kansas Workers Compensation Schedule of Medical Fees. The ALJ denied claimant's request for the right to future medical treatment.

Claimant appeals, requesting the award be modified to the afford him the right to seek and obtain medical treatment as is reasonably necessary to cure and relieve the effects of the injury, which may include posttraumatic degeneration of his knee, pursuant to K.S.A. 44-510h(e) and K.S.A. 44-525(a).

Respondent argues the ALJ's denial of the right to future medical treatment should be affirmed.

The issue on appeal is whether the ALJ was correct in finding claimant failed to prove it is more likely true than not he will require additional medical treatment as result of his injury.

FINDINGS OF FACT

Claimant began working at respondent in May 2008. At the time of his accident, March 24, 2013, claimant was working as a catastrophe adjuster, and had a ladder land on his left knee. He was eventually sent to a doctor. Claimant was off work a little over seven weeks for his injury, last working for respondent in September 2013. Claimant currently works for State Farm Insurance performing the same type of work he did for respondent.

Claimant was evaluated by several physicians at OHS Comp Care (OHS) from May 28, 2013, until July 18, 2013, for his left knee pain associated with a fall. Plain films of the knee revealed a questionable fracture of the proximal head of the fibula. He had full range of motion in his knee, with occasional non-painful popping in the knee. Claimant was able to return to full duty once the fracture of the proximal head of the fibula healed. Over the course of his visits to OHS, claimant was able to continue working without restrictions. Claimant was released at maximum medical improvement (MMI) on July 18, 2013, and was released to full duty. He is not on any medications, has no restrictions and has had no treatment since July 2013. Claimant is not aware of any recommendations for additional treatment for his knee. Claimant testified he did not receive any treatment for his knee in 2013.

Claimant continues to exercise, but does nothing that puts weight on his legs. He no longer does squats, lunges or leg presses. Claimant indicated he also sporadically works on strengthening his leg under the supervision of his friend, who is a personal trainer. Claimant testified he tries to stay active by performing circuit training.

Claimant met with Terrence Pratt, M.D., for a court-ordered independent medical examination (IME) on May 22, 2015. Claimant's chief complaint was left knee discomfort, which he relates to his work activities in 2013 and the knee giving away with changes in the weather. Dr. Pratt noted claimant waited a month after the accident before seeing a doctor.

Dr. Pratt wrote that claimant complained of continuous medial pain in his knee with shooting pain posteriorly and less frequent distal anterior pain. Claimant stated that changes in weather cause the knee to give way. Claimant also reported popping in his knee and stiffness in his knee in the morning. Claimant's symptoms are exacerbated with running, playing soccer and lifting weights. Claimant denied any prior problems with his knee. Claimant was told he had a medial fracture near the left knee and was asked to diminish weightbearing.

Dr. Pratt examined claimant and noted medial palpable tenderness of the left knee with slight patellofemoral crepitus primarily on the right. There were no significant findings with meniscus testing, drawer testing, or mediolateral laxity. Motor assessment revealed mild giveaway at the knee with flexion and extension on the left, sensory to sharp stimulation was reported as intact in the lower extremities and gait was within normal limits.

Utilizing the AMA *Guides*, 4th ed.[1], Dr. Pratt assigned claimant a 3 percent impairment to the left lower extremity for mild atrophy of the thigh and a 5 percent impairment to the left lower extremity for a plateau fracture without significant displacement. He combined those impairments for an 8 percent left lower extremity impairment at the knee.

On August 19, 2015, Dr. Pratt issued an addendum to his report at which time he wrote that, at his first evaluation, claimant did not require additional active medical care. Dr. Pratt noted that, with the traumatic event and possible fracture of the knee, if claimant develops any significant increase in symptoms, he will require physician reassessment with additional plain films ruling out posttraumatic degenerative-type changes. Otherwise, claimant would not require medical treatment based on the definition provided in the July 22, 2015, letter.

Claimant is not currently receiving any medical treatment, but continues to have sharp shooting pain into his knee and his knee gives out sporadically when he walks or stands for a period of time. Claimant testified he must notify his supervisors that his leg may give out while he is on ladders. Claimant also testified that temperature and weather changes have begun to affect his knee, and that cold and rain makes his knee ache. He testified the aching can get so bad he has to sit until it passes or he will be unable to walk. Claimant is not able to do any sustainable running like playing soccer since the accident. Claimant denies any problems with his knee prior to the accident.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2012 Supp. 44-510h(e) states:

> (e) It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical

[1] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are to the 4th edition unless otherwise noted.

> improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

K.S.A. 2012 Supp. 44-525(a) states:

> (a) Every finding or award of compensation shall be in writing, signed and acknowledged by the administrative law judge and shall specify the amount due and unpaid by the employer to the employee up to the date of the award, if any, and the amount of the payments thereafter to be paid by the employer to the employee, if any, and the length of time such payment shall continue. No award shall include the right to future medical treatment, unless it is proved by the claimant that it is more probable than not that future medical treatment, as defined in subsection (e) of K.S.A. 44-510h, and amendments thereto, will be required as a result of the work-related injury. The award of the administrative law judge shall be effective the day following the date noted in the award.

Once a claimant reaches MMI, he or she is presumed, by statute, to no longer need additional medical treatment. To overcome that presumption, claimant must prove, more probably true than not that additional medical treatment will be necessary, after claimant reaches MMI. As noted by the ALJ, claimant has shown a possible need for additional medical treatment in the future, but a possibility does not satisfy the statutory burden required. Dr. Pratt's opinion couches the need for future medical treatment on a requirement that claimant develop a significant increase in symptoms, which claimant has not shown. The Board finds claimant has not overcome the statutory burden that it is more probably true than not additional medical treatment will be necessary post MMI.

Claimant contends a conflict exists between K.S.A. 44-510h(e) and K.S.A. 44-525(a). Claimant argues K.S.A. 44-510h(e) places no time limit on the right to pursue medical treatment, while K.S.A. 44-525(a) establishes a time limitation as of the creation of the "Award" by the ALJ. However, the burden is the same in both statutes. Claimant must prove more probably than not that additional medical treatment will be necessary as a result of the work-related injury. Claimant has failed to meet his burden.

The Board finds the Award of the ALJ denying claimant future medical treatment is supported by this record. The possibility raised by Dr. Pratt does not satisfy claimant's statutory burden.

CONCLUSIONS

Having reviewed the entire evidentiary record contained herein, the Board finds the Award of the ALJ should be affirmed. Claimant has failed to overcome the statutory

presumption that respondent has fulfilled its statutory requirement that it provide medical care required by the Kansas Workers Compensation Act.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated November 10, 2015, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June, 2016.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

DISSENT

The undersigned Board Member dissents from the finding of the majority that claimant is not entitled to apply for future medical benefits. A medical provider takes into consideration several factors in rendering an opinion whether an injured worker will need future medical care. Those factors include the medical provider's experience with similar injuries, the likelihood of the medical condition and/or symptoms worsening and whether medical treatment would cure and relieve the effects of the injury.

In certain circumstances, a physician can definitively opine that an injured worker will need future medical treatment because, more likely than not, his or her medical condition will worsen or become symptomatic. In other instances, the future need for medical care can be cloudy. For example, if an injured worker strictly follows a doctor's orders to perform certain exercises, avoid certain activities or follow a certain regimen, the likelihood of needing future medical treatment is diminished.

Dr. Pratt indicated that if claimant's symptoms significantly increase, he will need a reassessment with additional films, otherwise he will not require additional medical treatment. This Board Member would find it is more probably true than not that claimant currently has significant symptoms. Claimant testified he continues to have sharp shooting pain in his knee and his knee gives out sporadically when he walks or stands for a period of time. Those are the significant symptoms to which Dr. Pratt referred.

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BOARD MEMBER

c: Mark E. Kolich, Attorney for Claimant
mek@kolichlaw.com
justjulie1@yahoo.com

Kendra M. Oakes, Attorney for Self-Insured Respondent
koakes@mvplaw.com
bduncan@mvplaw.com

Kenneth J. Hursh, Administrative Law Judge